

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**FRUTH INC. d/b/a FRUTH PHARMACY,**

**Plaintiff,**

**v.**

**Civil Action No. 3:18-cv-01288  
(Judge Chambers)**

**NEC NETWORKS, LLC d/b/a CAPTURERX,**

**Defendant.**

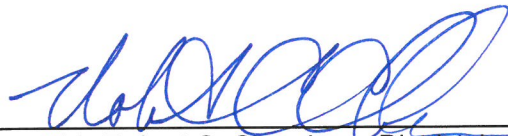
**AGREED ORDER REFERRING CLAIMS TO ARBITRATION AND  
DISMISSING ACTION FOR LACK OF SUBJECT MATTER JURISDICTION  
PURSUANT TO AGREEMENT TO ARBITRATE**

On this day came the Plaintiff, Fruth Inc. d/b/a Fruth Pharmacy ["Fruth"], and the Defendant, NEC Networks, LLC d/b/a CaptureRX ["CaptureRX"], by their respective counsel, and jointly announced to the Court that Fruth does not oppose CaptureRx's Motion to Compel Arbitration and Motion to Dismiss for Lack of Subject Matter Jurisdiction. The parties thereupon moved the Court for the entry of an order referring all claims asserted in the above captioned civil action to arbitration to be conducted in the State of West Virginia pursuant to the Rules of the American Arbitration Association. The parties further moved the Court for the entry of an order dismissing the above captioned civil action for lack of subject matter jurisdiction pursuant to the agreement to arbitrate all claims with such dismissal to be without prejudice as to the merits of the claims to be pursued or advanced in arbitration.

It is, therefore, ORDERED that CaptureRX's Motion to Compel Arbitration be and the same is hereby GRANTED and all claims asserted in the above captioned civil action are referred to arbitration to be conducted in the State of West Virginia and pursuant to the Rules of the American Arbitration Association.

It is further ORDERED that the above captioned civil action be dismissed for lack of subject matter jurisdiction given the obligation and agreement of the parties to arbitrate all claims asserted in this civil action with such dismissal to be without prejudice as to the merits of the claims to be pursued or advanced in arbitration.

Enter this 11<sup>th</sup> day of Oct, 2018.



Honorable Robert C. Chambers, District Judge

Presented by:

/s/J.H. Mahaney

Daniel A. Earl, Esquire (WV Bar No. 6025)  
J.H. Mahaney, Esquire (WV Bar No. 6993)  
Dinsmore & Shohl, LLP  
611 Third Avenue  
Huntington, WV 25701  
304-529-6181  
304-522-4312 fax  
*Counsel for Plaintiff*

/s/Jeffrey M. Wakefield

Jeffrey M. Wakefield, Esq. (WV Bar No. 3894)  
Jason L. Holliday, Esq. (WV Bar No. 12749)  
Flaherty Sensabaugh Bonasso, PLLC  
200 Capitol Street  
P. O. Box 3843  
Charleston, West Virginia 25338-3843  
304-345-0200  
304-345-0260 fax  
[JWakefield@flahertylegal.com](mailto:JWakefield@flahertylegal.com)  
[JHolliday@flahertylegal.com](mailto:JHolliday@flahertylegal.com)  
*Counsel for NEC Networks, LLC*  
*d/b/a CaptureRX*